

acted honestly and reasonably in the discharge of his duties as director, I concluded that he ought not to be excused under section 354 of the Act. For all these reasons, I made an order in terms of the application.

Application allowed.

Solicitors: *Netto Low & Partners.*

**ABDUL WAHAB BIN SULAIMAN v.
COMMANDANT, TANGLIN DETENTION
BARRACKS**

[O.C.J. (Sinnathuray J.) January 7, 1985]
[Singapore – Originating Motion No. 63 of 1984]

Military Law – Conviction and sentence by General Court Martial – Appeal to Military Court of Appeal – Enhancing of sentence – National serviceman left Army when appeal was heard – Habeas corpus – Jurisdiction and powers of Military Court of Appeal – Constitution of Singapore, Art. 9(2) – R.S.C. 1970, O. 54 – Singapore Armed Forces Act, 1972, ss. 108 & 121(1), (4), (5) & (9).

Administrative Law – Military Court of Appeal – Jurisdiction and exercise of powers – Not subject to review by prerogative writs or orders of High Court.

The applicant applied for an order of *habeas corpus* against the respondent, the Commandant, Tanglin Detention Barracks. The applicant, a national serviceman, was convicted on April 30, 1984 by a General Court Martial on his plea of guilty for possession of a controlled drug contrary to section 6(a) of the Misuse of Drugs Act, 1973. He was ordered to undergo detention for 6 months. The Head of Legal Services of the Singapore Armed Forces appealed on May 2, 1984 against inadequacy of sentence to the Military Court of Appeal. The applicant served his sentence and was released from detention on July 13, 1984. He completed his national service and was released from the Army on July 23, 1984. The appeal against the sentence was heard by the Military Court of Appeal consisting of a Supreme Court judge as president and 4 other members, on July 27, 1984 and August 11, 1984. The applicant questioned the competency of the Military Court of Appeal to hear and adjudicate on the appeal.

Held, dismissing the application (1) the Military Court of Appeal is a superior court. Its jurisdiction and the exercise of its full power to hear and determine appeals from a subordinate military court are matters that cannot be reviewed by any of the prerogative writs or orders of the High Court. An order for a writ of *habeas corpus* therefore cannot lie against the respondent;

(2) when the notice of appeal was given on May 2, 1984, the Military Court of Appeal was seised of the appeal and the applicant was a full-time national serviceman subject to military law. The appeal was therefore properly

A before the Military Court of Appeal. Its jurisdiction was not ousted by reason of the fact that the applicant was no longer in the army when that court heard the appeal.

Editorial Note: Observations on the distinction between superior and inferior courts are discussed in detail in the Judgment.

B *Case referred to:*

R. v. Cripps, ex parte Muldoon and Ors. [1983] 3 All E.R. 72.

C **ORIGINATING MOTION.**

J.B. Jeyaretnam for the applicant.

S. Tiwari (Senior State Counsel) for the respondent.

Cur. Adv. Vult.

D **Sinnathuray J. :** By way of notice of motion, the applicant, Abdul Wahab bin Sulaiman, through his counsel, Mr. J.B. Jeyaretnam, seeks an order for a writ of *habeas corpus* against the Commandant, Tanglin Detention Barracks.

E The facts which are not in dispute can be stated shortly.

F On March 23, 1982 the applicant was enlisted into the Army for full-time national service. On April 30, 1984 he was convicted by a General Court Martial on his plea of guilty to a charge of committing a civil offence contrary to section 108 of the Singapore Armed Forces Act, 1972 ("the SAF Act") for being in unlawful possession of 0.73 gram of cannabis, a controlled drug, contrary to section 6(a) of the Misuse of Drugs Act, 1973, and punishable under section 29 of the said Act. He was ordered to undergo detention for six months with effect from March 14, 1984. On May 2, 1984, the Head of Legal Services of the Singapore Armed Forces lodged a notice of appeal in the Military Court of Appeal against the sentence of six months on the grounds that it was manifestly inadequate. The applicant served his sentence at the Tanglin Detention Barracks and was released from detention on July 13, 1984. He completed his national service and was released from the Army on July 23, 1984.

H The appeal against sentence by the Head of Legal Services was heard by the Military Court of Appeal on July 27 and August 31, 1984. The Military Court of Appeal consisted of Mr. Justice F.A. Chua, as President, Mr. Goh Heng Leong, Mr. Giam Chin Toon, advocates and solicitors, Colonel Lee

Seng Kong and Colonel Lai Seck Khui, both SAF officers, as members.

At the first hearing on July 27, 1984, counsel for the applicant raised the question of the competency of the Military Court of Appeal to hear and adjudicate on the appeal. Having heard arguments on the issue, the Military Court of Appeal adjourned the hearing to August 31, 1984 to enable the representative of the Head of Legal Services to reply to the submission.

At the continued hearing on August 31, 1984, having heard the representative of the Head of Legal Services, the Military Court of Appeal ruled that it had jurisdiction to hear the appeal of the Head of Legal Services. After hearing the appeal, the Court allowed the appeal. It set aside the sentence of the General Court Martial and enhanced the sentence of the applicant to 18 months' detention with effect from March 14, 1984. The applicant is now serving sentence at the Tanglin Detention Barracks pursuant to the order of the Military Court of Appeal.

In his affidavit the applicant says that he is advised by his solicitors and verily believes that the Military Court of Appeal had and has no jurisdiction to hear and adjudicate upon the appeal by the Head of Legal Services of the Singapore Armed Forces or to enhance his sentence after he was released from full-time national service. He contends that his detention by the respondent, the Commandant, Tanglin Detention Barracks, is therefore unlawful.

Before I consider the submission of Mr. Jeyaretnam on the competency of the Military Court of Appeal to hear and adjudicate the appeal, there is the question whether a writ of *habeas corpus* can lie against the respondent for his detention of the applicant ordered by the Military Court of Appeal. The submission of Mr. Tiwari for the respondent is that as the Military Court of Appeal is a superior court of record, a writ of *habeas corpus* cannot be granted against this Court. The application, he says, is misconceived.

Section 121(1) of the SAF Act provides that there shall be established a Military Court of Appeal which shall be "a superior court of record". The subsection also provides that the President of the Military Court of Appeal shall be, or is a person qualified to be, a Judge of the Supreme Court. The present holder of this office, as I have said, is a Judge of the Supreme Court. The jurisdiction of

A the Military Court of Appeal is to hear and determine any appeal from a subordinate military court, defined in the SAF Act to include general courts martial, by a person convicted, and against an acquittal or a sentence manifestly inadequate, by the Head of Legal Services: Section 121(4) and (9) of the SAF Act. I pause here to observe that section 121(9) is not, as was submitted by Mr. Jeyaretnam, a procedural provision but as correctly shown by Mr. Tiwari, a substantive provision on jurisdiction. It gives a right of appeal to the Head of Legal Services to appeal to the Military Court of Appeal on an acquittal or sentence. Then, under section 121(5), the Military Court of Appeal has "full power to determine, in accordance with this Act any question necessary to be determined for the purpose of doing justice in any case before it" and to issue warrants for enforcing its orders or sentences. Section 154 of the SAF Act provides that there shall be no appeal from any decision of the Military Court of Appeal.

Having referred to the provisions relating to the constitution, jurisdiction and powers of the Military Court of Appeal, for the purpose of this application, it is necessary to further inquire into what is meant by the provision that the Military Court of Appeal is a superior court of record.

The origin of the terms "inferior" and "superior" can be traced back through a study of the history of the courts in England. The subject is now dealt with in *Halsbury's Laws of England* under the heading "Classification of Courts": see 4th Edition, Volume 10, pages 318-322, paras 707-714. One way of dividing courts is into courts of record and courts not of record. No consideration is required here of the distinction between these courts. Another manner of division is into "superior" and "inferior" Courts. These terms have on different occasions been used in different senses. But it is beyond doubt that the Court of Appeal, the High Court, and in the context of the present case, the Courts-Martial Appeal Court in England "are superior courts in all senses of the term".

The distinction between superior and inferior courts is to be found in the jurisdiction and powers of the courts. In paragraph 713 in *Halsbury's* it is noted that "*Prima facie*, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court". Such issues are determined in

Singapore by the High Court in the exercise of its supervisory jurisdiction. Generally, inferior courts are subject to control and supervision by the High Court as a superior court.

Recently, in *R v. Cripps, ex parte Muldoon & Ors.* ⁽¹⁾, Goff L.J. and Mann J. examined the constitution, jurisdiction and powers of an election court, and its relationship with the High Court, in order to decide whether the election court was inferior to the High Court, so that its activities may properly be the subject of judicial review by the High Court. The Court held that an election court was to be regarded as a superior court and accordingly the High Court had no jurisdiction to grant relief by way of judicial review. Goff L.J. who delivered the judgment of the Court, considered other tribunals where, he said, the same problem either may arise or has arisen. On the Courts-Martial Appeal Court and the Restrictive Practices Court he observed: "There could, we think, in any event be no doubt that these courts are superior courts". Why there was no doubt in the matter was because Goff L.J. had earlier referred to the relevant statutory provisions which expressly declared that the Courts-Martial Appeal Court and the Restrictive Practices Court shall be superior courts of record. Goff L.J. then said, and as I understand him, he was referring to tribunals not created by statute as superior courts

"One fact to be taken into account appears to be whether High Court judges sit in the court in question, because it may be inappropriate that a Divisional Court of the Queen's Bench Division should exercise powers of judicial review over courts consisting of or including High Court judges. But that is merely one factor to be taken into account; it is not conclusive."

From the cases he reviewed, though Goff L.J. found it "difficult to extract any precise principle", the following propositions, I think, can be safely made. Where courts are expressly declared by statute to be superior courts, it is beyond doubt that the High Court has no supervisory jurisdiction over them. Their decisions cannot be subject to review by the High Court. In the case of a court not expressly declared to be a superior court, the answer to the question whether the court is "superior" or "inferior" depends on the nature, jurisdiction and powers of the particular court. On the nature of the court, a relevant fact is whether the court is presided over by a Judge of the High Court. On jurisdiction, I have referred to the main distinction to be drawn between superior

A and inferior courts found in paragraph 713 in *Halsbury's*. There are other distinctions touching on jurisdiction as well in paragraph 714 thereof. On the subject of powers, where a court is given "full power to determine in accordance with the Act, any question necessary to be determined for the purpose of doing justice in any case before it", it seems to me, that the Court in the exercise of such a power would fall to be described as a superior court.

C In his submission, Mr. Jeyaretnam sought to distinguish the Military Court of Appeal from the Courts-Martial Appeal Court in England. By looking at section 2(1) of the Courts Martial (Appeals) Act 1968 which provides for the appointment of Lord Justices and some of the Judges in the United Kingdom to the Courts-Martial Appeal Court, he said that the composition was different from the Military Court of Appeal.

E To begin with, I do not know what the constitution of the Courts-Martial Appeal Court is for particular sittings as, in addition to appointments under section 2(1) above, the Lord Chancellor may, under section 2(2), appoint other persons, being persons of legal experience, to be Judges of the Courts-Martial Appeal Court. In any event, from a consideration of *Cripps' case*, even if the composition of the Courts-Martial Appeal Court is different from that of the Military Court of Appeal, the matter is of no consequence because both these Courts are presided over at least by High Court Judges.

G Again, by reference to section 39 of the above Act which gives a right of appeal from the Courts Martial Appeal Court to the House of Lords, Mr. Jeyaretnam argued that as section 154 of the SAF Act provides that no appeal shall lie from any decision of the Military Court of Appeal, it is different from the Courts-Martial Appeal Court.

H I do not agree with Mr. Jeyaretnam that because there is no appeal from the Military Court of Appeal, the Court is not a superior court. There is a short answer. We know that, except on a question of law of public interest, there is no appeal from the appellate criminal jurisdiction of the High Court. If Mr. Jeyaretnam is right, it must follow that when the High Court exercises its appellate criminal jurisdiction it is an inferior court. But we know that this is not so, for it is settled law that though decisions of the High Court in the appellate criminal jurisdiction are not appealable, the High Court is nonetheless a superior court.

I can now come to apply the propositions I formulated earlier to the Military Court of Appeal. As the Military Court of Appeal is a superior court, its jurisdiction and the exercise of its full power to hear and determine appeals from a subordinate military court are matters that cannot be reviewed by any of the prerogative writs or orders of the High Court. It follows that any warrants or orders made for enforcing the decisions of the Military Court of Appeal cannot be challenged in the High Court. Therefore, an order for a writ of *habeas corpus* cannot lie against the Commandant, Tanglin Detention Barracks, for the detention of the applicant, as the Commandant was only carrying out the order of the enhanced sentence made by the Military Court of Appeal.

There is, however, the main argument of Mr. Jeyaretnam that the Military Court of Appeal was not a court of competent jurisdiction to order the detention of the applicant because when the Military Court of Appeal heard his case and enhanced his sentence the applicant was no longer in the Army. The submission was, as the applicant was not subject to military law when the appeal was heard, the Military Court of Appeal had no jurisdiction to hear the appeal.

This very argument was put to the Military Court of Appeal and the Court, in my view, rightly refused to accept it. Mr. Justice F.A. Chua, the President of the Military Court of Appeal, said in his Grounds of Decision,

"The answer to the submission of counsel for the respondent [now the applicant] is to be found in section 105(1) of the SAF Act.

It is clear that by section 105(1) the Respondent [applicant] is treated for the provisions of the SAF Act relating to arrest, keeping in custody, investigation of offences, trial and punishment by a subordinate military court and execution of sentences as continuing to be subject to military law notwithstanding his ceasing at any time to be subject to military law. The Respondent was therefore subject to military law when the appeal came up for hearing."

I have another cogent reason why the argument must be rejected. The argument concerning the competency of the Military Court of Appeal to hear the appeal raises the fundamental question as to when the Military Court of Appeal was seised of the particular appeal. In my view, it cannot be that the Military Court of Appeal acquired jurisdiction to hear the appeal on the date when the appeal first came on for hearing before it, on July 27, 1984. By way of analogy, it is wrong to say that the Court of Appeal and the Court of Criminal

Appeal are only seised of their appeals on the day the appeals come on for hearing in these Courts. Again, it is wrong to say that the High Court is vested with jurisdiction to hear an action on the day the action is heard in the High Court. The correct position is that, in the case of an action in the High Court, the High Court was vested with jurisdiction to adjudicate on the dispute when the writ of summons commencing the action was issued in the High Court. And, in the case of the two Appellate Courts, they acquired their jurisdiction to hear the appeals when notices of appeal were lodged in those Courts. So too, as regards the Military Court of Appeal, when, under section 123 of the SAF Act, the Head of Legal Services gave notice of appeal to the Registrar of the Military Court of Appeal against the manifestly inadequate sentence imposed on the applicant by the subordinate military court, the Military Court of Appeal was seised of the appeal. That notice was lodged on May 2, 1984. On that day the applicant was a full-time national serviceman subject to military law. The appeal was therefore properly before the Military Court of Appeal. The appeal not having been withdrawn, the Military Court of Appeal had to, in accordance with provision of the SAF Act, hear and determine the appeal. In my judgment, when the Military Court of Appeal heard the appeal on July 27 and August 31, 1984, the jurisdiction of the Military Court of Appeal was not ousted by reason of the fact that the applicant was no longer in the Army.

For the reasons I have given, this application is dismissed with costs.

Application dismissed.

Solicitors: J.B. Jeyaretnam & Co.